IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1510 OF 2007

Ramgopal Mehra and anr. ..Petitioners
Vs.
Anu Sanjay Mehtra and anr. ..Respondents

Mr. K.H. Holambe Patil for petitioners.
Mr. P.A. Pol, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 17, 2007.

P.C.:

1. Heard Mr. Holambe Patil the learned counsel for the petitioners. This petition filed under Article 227 of the Constitution arises from an order passed by the learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai on 8/6/2007 on an application at Exh.9 and duly confirmed by the learned Additional Sessions Judge, Greater Mumbai by dismissing Criminal Revision Application No. 631 of 2007 on 25/7/2007.

2. On the complaint filed by the present respondent no.1 - Anu Sanjay Mehra under Sections 17 to 20, 22, 23 and 26 of the Protection of Women from Domestic Violence Act, 2005 (the Act for short) Notice No.244/N/2007 came to be registered against the petitioners. The respondents filed their reply and moved an application at Exh.9 praying for dismissal of

the complaint/notice on the grounds that the complainant Anu as well as her husband Arun are not the citizens of India and, therefore, Anu is not entitled to move the complaint under the Act. It was further pointed out that the complainant did not accept the citizenship of India and her husband had given up the citizenship of India and accepted the citizenship of Canada. It was, therefore, prayed that before any order was passed on the notice registered at the instance of the complainant the preliminary point was required to be decided, mainly, whether the complainant could avail any relief under the provisions of the Act.

3. On hearing both the parties, the learned Magistrate while rejecting the application by his order dated 8/6/2007 held that on the procedural part the notice or complaint filed under the Act are governed by the Cr.P.C., the alleged offence was committed while the complainant was residing with the present petitioners as a member of their family who is also entitled to claim the human rights protection. The learned Magistrate also considered the preamble of the Act which is mainly to provide for more effective protection of rights of women guaranteed under the

Constitution and who are victims of violence of any kind occurring within the family and for matters connected thereto or incidental thereof. He further held that the alleged incident of domestic violence had occurred within his jurisdiction and, therefore, the complaint was maintainable. He considered the provisions of Section 179 of Cr.P.C. and the provisions of Section 27 of the Act and held that the notice at the instance of the wife was maintainable so long as the alleged incident had taken place while she was residing with the present petitioners as a member of their family. This view has been endorsed by the Sessions Court while dismissing the revision application filed by the present petitioners.

4. It was contended by Mr. Holambe Patil that the Act is meant to provide the protection as enshrined in the Constitution and the Constitution of India protects only its citizens and not the foreign nationals. These submissions and the averments made in the application at Exh.9 do not come in the way of the complainant to maintain a notice so as to seek relief under the Act so long as she was staying at the relevant time within the territorial jurisdiction of the learned Magistrate and as a member of the family

of the present petitioners. The courts below have rightly held that the complainant was covered under the Act and the preliminary point raised by the petitioners was rightly rejected. Section 2 sets out the definitions and clause (a) therein defines the term "aggrieved person" and it means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. As per the contentions of Mr.Holambe Patil the term "any woman" is required to be read as "any Indian woman". Such a definition, the Parliament in its wisdom, has not set out under Clause 2(a) of the Act. When the Act specifically stated that "any woman" who has been in domestic relationship with the respondent, her citizenship is inconsequential and her being foreign national will not come in her way to approach for remedial reliefs under the Act. When the Parliament has used the word "any woman" it is not permissible for the courts to read it as "any Indian woman". What is important is the existence of a domestic relationship and the aggrieved woman in such domestic relationship could be a citizen of any country. We have no law which compels a foreign national woman married to an Indian or of an Indian origin man to

accept the Indian nationality, so as to enable her to be a part of a domestic relationship in our country.

5. No interference is, therefore, called in the concurrent view taken by both the courts below and hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)